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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,012	10/20/2003	James R. Raskin	P-TN-3167A	4121

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Black & Decker Inc.
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EXAMINER

GONZALEZ, MADELINE

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,012

Applicant(s)

RASKIN ET AL.

Examiner

Madeline Gonzalez

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-39 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-39 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/18/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

In response to applicant's amendment dated November 23, 2004

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich et al. (U.S. 6,502,319) [hereinafter Goodrich] in view of Courson et al. (U.S. 6,431,508) [hereinafter Courson].

Art Unit: 2859

Goodrich discloses a level 44, as shown in Fig. 9, having:

- a housing 24;
- a first light diode 14 disposed in the housing 24 for emitting a first light beam along a first path;
- a first lens 20 disposed in the housing 24 in the first path for converting the first light beam into a first planar beam, the first planar beam forming a first line 52 on a reference surface 48, as shown in Fig. 10;
- a hanging assembly connected to the housing for mounting the level 44 to the reference surface 48, the hanging assembly including a magnet 45 disposed on the housing 24; and
- wherein the first line 52 is substantially horizontal and the reference surface is a substantially vertical wall 48.

Goodrich lacks the hanging assembly having a reference surface assembly that contacts the reference surface, and a magnet disposed on one of the reference surface assembly and the housing and a metal plate disposed on the other of the reference surface assembly and the housing.

With respect to the hanging assembly having a reference surface assembly that contacts the reference surface, and a magnet disposed on one of the reference surface assembly and the housing and a metal plate disposed on the other of the reference surface assembly and the housing: Courson discloses a system, as shown in Fig. 2, having a hanging assembly comprising

Art Unit: 2859

mutually attracting magnets or magnetic surfaces applied to a base member 11 (housing) and to a supporting surface 30 (reference surface) to hold them together. One of the magnets has a magnetic surface disposed on a reference surface assembly (said reference surface assembly is the back of the magnet) contacting supporting surface 30 (reference surface), and the other magnet (metal plate) is disposed on base member 11 (housing). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a magnet (metal plate) as taught by Courson to the hanging assembly disclosed by Goodrich in order to hold the level and the reference surface together, even when said reference surface is non-metallic.

4. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (U.S. 6,502,319) in view of Courson (U.S. 6,431,508) as applied to claims 31 and 39 above, and further in view of Le (U.S. 5,539,990).

Goodrich as modified by Courson disclose all the subject matter claimed above in paragraph 3 with the exception of a second light diode, the lines being perpendicular and the lines being parallel.

With respect to the second light diode, the lines being perpendicular and the lines being parallel: Le discloses a light level, as shown in Fig. 3, having a first light diode 31 disposed in a housing for emitting a first light beam along a first path, a first lens 51 disposed in the housing in

Art Unit: 2859

the first path for converting the first light beam into a first planar beam forming a first line on a reference surface, a second light diode 32 disposed in the housing for converting a second light beam along a second path, a second lens 52 disposed in the housing in the second path for converting the second light beam into a second planar beam, the second planar beam forming a second line on the reference surface, wherein the first and second lines are substantially perpendicular, as shown in Fig. 2, and a light diode 33 can formed a line substantially parallel to the second line. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a second light diode as taught by Le to the level disclosed by Goodrich as modified by Courson in order to provide a horizontal and vertical planes without having to rotate the tool.

5. Claims 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (U.S. 6,502,319) in view of Courson (U.S. 6,431,508) as applied to claims 31 and 39 above, and further in view of Vasile (U.S. 4,700,489).

Goodrich as modified by Courson disclose all the subject matter claimed above in paragraph 3 with the exception of a detector circuit disposed in the housing for detecting a feature behind the reference surface, and the detector circuit controlling the first light diode.

With respect to the detector circuit disposed in the housing for detecting a feature behind the reference surface and the detector circuit controlling the first light diode: Goodrich teaches in

Art Unit: 2859

Fig. 12 that a stud finder 58 can be attached to the level 44, said stud finder does not control the first light diode 14; however, Goodrich does not teaches that the stud finder is positioned in the housing of the level. Vasile discloses a tool, as shown in Fig. 1, having a detector circuit 9 disposed in a housing, said detector circuit detects studs. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a stud finder as taught by Vasile in the housing disclosed by Goodrich as modified by Courson in order to make the tool more compact. Furthermore, it would have been obvious to make the detector circuit to control the light diode, so that, upon detecting the feature, the first light diode lights up, as claimed by applicant, in order to provide a better visual indication of the location of a stud.

6. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (U.S. 6,502,319) in view of Courson (U.S. 6,431,508) as applied to claims 31 and 39 above, and further in view of Sorton (U.S. 4,947,616).

Goodrich as modified by Courson disclose all the subject matter claimed above in paragraph 3 with the exception of the reference surface assembly comprising at least on of the group consisting of a pin and a mandrel.

With respect to the reference surface assembly comprising at least on of the group consisting of a pin and a mandrel: Sorton discloses a tool, as shown in Fig. 1, having a reference surface assembly 24 having pins 48 holding magnets 46 in place. Therefore, it would have been

Art Unit: 2859

obvious to a person having ordinary skill in the art at the time the invention was made to add a pin as taught by Sorton to the reference surface assembly disclosed by Goodrich as modified by Courson in order to attach the reference surface assembly to the reference surface.

Response to Arguments

7. Applicant's arguments, see page 5, lines 9-13, filed on November 23, 2004, with respect to the rejection(s) of claim(s) 31-39 and 42 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as stated above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schwandt, Juhasz, Wester et al. ('890) and Crorey disclose the use of magnetic attaching means.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

Art Unit: 2859

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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